

B. Miller



Comptroller General  
of the United States

43145

Washington, D.C. 20548

## Decision

**Matter of:** Palmer Contracting--Reconsideration

**File:** B-256461.2

**Date:** April 29, 1994

Kenneth P. Secor for the protester.  
Behn Miller, Esq., and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Prior decision dismissing protest is affirmed where on its face protest was untimely filed and additional information purporting to establish timeliness was available but not submitted by the protester in the course of the original protest.

### DECISION

Palmer Contracting requests reconsideration of our dismissal of its protest challenging the rejection of its offer as technically unacceptable under request for proposals (RFP) No. DTCG1-94-R-3WK142, issued by the United States Coast Guard, Department of Transportation, for two boilers and ancillary equipment for the Sandy Hook Coast Guard Station.

We affirm our dismissal.

The solicitation was issued on January 25, 1994, and provided that contract award would be made to the lowest-priced technically acceptable offer. Of relevance here, the solicitation restricted offerors to proposing only H. B. Smith Series 350 brand water tube boilers, part No. C3-OHBS10.

At the February 4 due date for receipt of proposals, Palmer was the apparent low offeror; however, because Palmer did not offer the H. B. Smith brand boiler model required by the RFP, the Coast Guard rejected its proposal as technically unacceptable. Shortly after learning that contract award had been made to the next lowest-priced offeror--Central Boiler Repair, Inc.--Palmer filed a protest with this Office, challenging the rejection of its proposal as improper.

059828/151539

We dismissed the protest as untimely. As explained in our decision, our Bid Protest Regulations require protests against alleged solicitation improprieties to be filed prior to the time set for receipt of proposals. See 4 C.F.R. § 21.2(a)(1) (1993). Although Palmer's protest purported to challenge the agency's award to Central Boiler, in essence, Palmer's protest challenged the solicitation language which restricted offerors to proposing only the W. B. Smith boiler model referenced in the RFP. Specifically, Palmer contended that the agency should have considered its proposed boiler brand as a technical equivalent to the specified H. B. Smith boiler model.

However, as noted by Palmer in its protest, the solicitation did not include a "brand name or equal" specification, and the requirement for an H. B. Smith item was clearly set out in the RFP. Consequently, because the H. B. Smith brand restriction was evident from the face of the solicitation, and since Palmer did not challenge this restriction prior to the February 4 closing time, we dismissed the protest.

On reconsideration, Palmer contends that its protest was timely filed since it submitted a "NOTIFICATION OF BRAND/MATERIALS SUBSTITUTION" sheet to the agency on January 31; Palmer contends that this notice constituted a "de facto" agency-level protest filed prior to the solicitation's closing date.

As a preliminary matter, we do not consider the January 31 document to be an agency-level protest; the submission contains no stated objection to or expression of dissatisfaction with the H. B. Smith boiler brand specification stated in the RFP, nor is there any request for agency relief or other action. As such, this document does not constitute an agency-level protest. See Federal Acquisition Regulation (FAR) § 33.103(b)(3). Compare Great Southwestern Constr., Inc., B-252917, Apr. 14, 1993, 93-1 CPD ¶ 322 (protester's letter was not an agency-level protest since it did not request any response or relief from the agency) with American Material Handling, Inc., B-250936, Mar. 1, 1993, 93-1 CPD ¶ 183 (protester's letter was clearly an agency-level protest since it recommended changes in the solicitation specifications and requested a response from the agency to its letter). In short, the protester's January 31 submission merely constituted a one-paragraph statement advising the agency that the protester was offering a different boiler brand than that specified in the solicitation.

In any event, even if we were to construe this submission as an agency-level protest, we would still not consider Palmer's challenge. During the course of Palmer's initial protest to this Office, the agency submitted a March 8

request for dismissal which contended that Palmer's protest was untimely; although we asked the protester to comment on the agency's submission, Palmer expressly declined.<sup>1</sup>

Our Regulations do not envision a piecemeal presentation of evidence, information, or analysis since the failure to make all arguments or submit all information during the course of the initial protest undermines the goals of our bid protest function to produce fair and equitable decisions based on consideration of all parties' arguments on a fully developed record. RC 27th Ave. Corp.--Recon., B-246727.2, May 20, 1992, 92-1 CPD ¶ 455. In this regard, 4 C.F.R. § 21.2(b) provides that a protester has an obligation to provide information establishing the timeliness of its protest; accordingly, when a protest appears untimely on its face and is dismissed for this reason, a protester will not be permitted to introduce for the first time, in a reconsideration request, facts and information establishing its timeliness where the facts and information were in the protester's possession and could have been provided to our Office during the course of the initial protest's resolution. See Eurometalli s.p.a.--Recon., B-250522.2, Apr. 15, 1993, 93-1 CPD ¶ 323.

As noted above, even though Palmer's protest appeared untimely, the firm was given a full opportunity to comment on the agency's dismissal request. The protester did not provide a copy of the brand substitution notice submitted to the agency on January 31, or otherwise rebut the agency's timeliness argument. Since Palmer could have--but did not--present any evidence regarding timeliness during the course of its initial protest, its current timeliness arguments provide no basis for reconsidering our prior decision.

The dismissal is affirmed.

  
 Ronald Berger  
 Associate General Counsel

---

<sup>1</sup>On March 15, shortly after receiving the agency's request for dismissal, this Office held a telephone conference with the protester and the Coast Guard during which the protester was asked to submit comments on the agency's request for dismissal; the protester declined to do so.